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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,322	12/17/2001	Ewald Duermeier	10537/191	2274

26646 7590 09/30/2003

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EXAMINER

MICHALSKY, GERALD A

ART UNIT PAPER NUMBER

3753

DATE MAILED: 09/30/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

10/023,322

Applicant(s)

DUERMEIER ET AL.

Examiner

Gerald A. Michalsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the non-return valve specified in claim 25, line 1 and the reverse siphon specified in claim 30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Should applicant choose not to provide a proposed drawing correction, formal drawings should be submitted which avoid the objections noted in the Notice of Draftsperson's Drawing Review (PTO-948) attached to paper no. 5.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 28-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 28 appears to be directed to the schematic arrangement shown in Figure 1 and described on page 5. However, the arrangement shown in Figure 1 is described on pages 3 and 4 as "schematic" and is not an actual embodiment exactly as illustrated. In the brief description of the drawings on

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pages 3 and 4 of the specification Figures 2 and 8 are described as the actual embodiments which are schematically illustrated in Figure 1. In claim 28 the recitations in lines 5-6 and 8-9 which recite "expands in an upward direction", the second chamber is arranged adjacent or above the first chamber", and "a discharge side of the second chamber extends directly over and into one of the de-aeration lines" appear to be directed to the schematic illustration of Figure 1. Such language on page 5 describes the schematic illustration of Figure 1. Note that Figures 2 and 8 define the actual embodiments of the device 4 schematically illustrated in Figure 1. Applicant has elected the embodiment of Figures 2-5, which is not consistent with the language of claim 28. The subject matter of claim 30 is also inadequately disclosed. Page 5 of the specification recites, "In a modified example embodiment, the collection device is configured in a simplified manner in the form of a reverse siphon." No "reverse siphon" is disclosed in the drawings and one of ordinary skill in the art would not know exactly how to make and use such a "reverse siphon". A siphon is usually an inverted U-shaped conduit with a long leg and a short leg in which flow is continued by the weight of liquid in the long leg allowing for up-flow in the short leg. One of ordinary skill in the art would not know exactly how to construct a "reverse" siphon in the environment of a fuel tank ventilation system and therefore, not enough information is supplied to construct and use the embodiment claimed in claim 30.

4. Claims 18-40 and 42-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent basis for: "the...de-

aeration lines" in claim 18, lines 2-3, et seq.; "the aeration/de-aeration lines" in claim 25, lines 2-3, et seq.; "the de-aeration lines inside of the fuel tank" in claim 28, line 2; "the wall" in claim 29, line 1; "the de-aeration lines inside of the fuel tank" in claim 33, line 2; "the through hole" in claim 34, line 2; "the de-aeration lines" in claim 34, line 4; "the de-aeration lines" in claim 35, line 1, et seq.; "the through hole" in claim 40, line 2; "the aeration/de-aeration lines" in claim 40, line 4; "the lines which are inside the fuel tank" in claim 42, line 5; and "the lines" (plural) in claim 43, line 1. The recitation of "the return line and de-aeration lines" in claim 18, lines 2-3 and "the aeration/de-aeration lines or return lines" in claim 40, line 4 is inaccurate and confusing because the "return" line is also an "aeration" or "de-aeration" line. To recite these lines in claims 18 and 40 as separate lines is inaccurate and confusing. As stated in the rejection above, the language in claim 28, used in describing a schematic illustration, is indefinite. The use of such language in the claims to describe a schematic embodiment is indefinite and inaccurate. The recitation of "expands in an upward direction" and "extends directly over and into one of the de-aeration lines" in claim 28 is not used in the specification to describe an actual embodiment and it cannot be determined which embodiment or embodiments, other than a schematic embodiment, are being described in claim 28. Applicant has elected the species of Figures 2-5, and the language of claim 28 is inconsistent with the embodiment of Figures 2-5. As stated in the rejection above, it is not known what is exactly specified by the language "reverse siphon" in claim 30. What is meant by the language "reverse siphon" is not a known or readily determined arrangement, and therefore the recitation of "reverse siphon" in the claims is indefinite.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 13-19, 21, 33, 43, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. The chamber above hole 14 of Yamamoto et al is read as “the other of the chambers”. Chamber 11 of Yamamoto et al, possibly including the chamber below hole 12, is read as a “temporary storage chamber”. The recitation of “for an approximately horizontal alignment of the fuel tank or the ventilation/pressure equalizing system” does not distinguish over Yamamoto et al because the device of Yamamoto et al also functions when the motor vehicle is caused to “start, stop or turn suddenly” as mentioned in column 2, lines 10-11 and also upon “jolting” of the vehicle as mentioned in column 1, line 30.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al in view of Ganachaud et al. This claim is considered met by Ganachaud et al except for a vapor recovery canister. It would have been obvious in view of the vapor recovery canister mentioned in column 1, line 25-28 of Ganachaud et al to provide a vapor recovery canister connected to the vent tube 13 of Yamamoto et al in order to recover fuel vapor help prevent environmental pollution.

9. Claims 13, 15-20, 25-26, 33, 35-39, 42-43, and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Ganachaud et al. The chamber of Figure 1 of Ganachaud et al above frusto-conical surface 9 is read as "the other of the chambers". The chamber of Figure 1 of Ganachaud et al below the frusto-conical surface 9 is read as a "temporary storage chamber". The passage controlled by diaphragm 14 of Figure 1 of Ganachaud et al is read as a "return line". The device of Ganachaud et al also functions "for an approximately horizontal alignment of the fuel tank" when motion of the vehicle causes a change in fuel level similar to the system of Yamamoto et al above. Regarding claim 17, gas outlet pipe 10 and ball 8 of Ganachaud et al are read as a "flow obstacle". Regarding claim 25, the ROV device of Figure 1 of Ganachaud et al is read as a "float-roll-over valve".

10. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Yamamoto et al or Ganachaud et al. This claim is considered met by either Yamamoto et al or Ganachaud et al except for the specific disclosure of plastic material. It would have been obvious to a person of ordinary skill in the art to use plastic material for the

devices of either Yamamoto et al or Ganachaud et al in order to decrease cost and simplify manufacturing.

11. Claims 13-19, 21-24, 33-34, 40-41, and 43-45 rejected under 35 U.S.C. 102(b) as being anticipated by Whitley. Compartment 80 of Figure 8 of Whitley is read as a "temporary storage chamber". Compartment 82 of Whitley is read as "the other of the chambers". Notches 134 of Figures 8 and 12 of Whitley are read as at least a portion of the "return line". Regarding claim 22, vertical partition 78 of Figures 8 and 9 of Whitley is read as a "vertically aligned wall". As with Yamamoto et al and Ganachaud et al, the device of Whitley also functions for a horizontal alignment of the fuel tank when the fuel tank is being filled or when motion of the motor vehicle causes sloshing of fuel even when the tank is in horizontal alignment.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald A. Michalsky whose telephone number is (703) 308-1049. The examiner can normally be reached on M-F 5:30 AM - 2 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Rivell, can be reached on (703) 308-2599. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

  
**Gerald A. Michalsky**  
**Primary Examiner**  
**Art Unit 3753**

GM  
September 30, 2003